

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
TREMONT FINEST DELI CORP	:	DETERMINATION
	:	DTA NO. 830960
for Revision of a Determination or for Refund of Cigarette	:	
Tax under Article 20 of the Tax Law for the Year 2021.	:	

Petitioner, Tremont Finest Deli Corp, filed a petition for revision of a determination or for refund of cigarette tax under article 20 of the Tax Law for the year 2021.

On March 23, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Richard Barton, Esq., did not submit a response by April 24, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, Tremont Finest Deli Corp, filed a petition with the Division of Tax Appeals on April 25, 2022.
2. The petition included a copy of: (i) a notice and demand for payment of tax due (notice and demand), bearing assessment number L-054938410, issued by the Division of

Taxation (Division) on April 8, 2022; and (ii) a consolidated statement of tax liabilities, bearing assessment numbers L-054938410 and L-055437400, issued by the Division on April 8, 2022.

3. The petition challenges the notice and demand and does not include any statutory notice.

4. On March 23, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that since the petition protests a notice and demand and a consolidated statement of tax liabilities, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. On April 17, 2023, in response to the notice of intent to dismiss petition, the Division submitted a letter stating, in part:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter and agrees as [sic] the Division of Tax Appeals lacks jurisdiction over the matter. Therefore, the Division is in agreement with the proposed dismissal regarding the Notice and Demand.”

6. Petitioner failed to respond to the notice of intent to dismiss the petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of a petition . . . protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached.

C. As petitioner failed to attach a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]; *see also Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. While the petition included a copy of a notice and demand and a copy of a consolidated statement of tax liabilities, these notices are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition (*see* Tax Law § 173-a [2]; *see also Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022; *Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019).

E. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
July 20, 2023

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE